U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals
INDEX

File: A74 388 962 - Los Angeles

Date: SEP - 2 1999

In re: PIERO PENNACCHIA

IN DEPORTATION PROCEEDINGS

INTERLOCUTORY APPEAL

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF SERVICE: RR Stern
Assistant District Counsel

The Immigration and Naturalization Service ("Service") has filed an appeal from an Immigration Judge's decision to grant the respondent's request to reopen these proceedings. We will sustain the Service's interlocutory appeal.

In order to avoid piecemeal review of the myriad of questions which may arise in the course of exclusion, deportation, and removal proceedings, this Board does not ordinarily entertain interlocutory appeals. See Matter of Ruiz-Campuzano, 17 I&N Dec. 108 (BIA 1979); Matter of Ku, 15 I&N Dec. 712 (BIA 1976); Matter of Sacco, 15 I&N Dec. 109 (BIA 1974). We have, however, on occasion ruled on the merits of interlocutory appeals where we deemed it necessary to address important jurisdictional questions regarding the administration of the immigration laws, or to correct recurring problems in the handling of cases by Immigration Judges. See, e.g., Matter of Guevara, 20 I&N Dec. 238 (BIA 1990, 1991), and cases cited therein; Matter of Dobere, 20 I&N Dec. 188 (BIA 1990). We have concluded that it is appropriate for us to rule on this interlocutory appeal, as it raises an important jurisdictional issue.

The respondent, a native and citizen of Italy, was charged with deportability under section 241(a)(1)(B) of the Act[1] by an Order to Show Cause (Form I-221) dated July 16, 1996. On July 3, 1997, he was found deportable as charged and granted the privilege of voluntarily departing the United States in lieu of deportation until March 3, 1998. See Order of the Immigration Judge, dated July 3, 1997. By motion dated February 23, 1998, the respondent requested reopening of proceedings to apply for adjustment of status based on his marriage to a United States citizen. The Service opposed the motion in writing, arguing that it was not

[1] Since amendments made by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208, 110 Stat. 3009 (enacted Sept. 30, 1996), are not currently applicable to the case before us, references herein are made to the Immigration and Nationality Act ("Act") as it existed prior to IIRIRA's enactment.

timely filed. See Service Opposition to Motion to Reopen, filed March 3, 1998. The Immigration Judge, by written decision dated March 25, 1998, determined that federal regulations requiring motions to be filed within 90 days of a "final administrative order" required only that the respondent file his motion no later than 90 days after the date his voluntary departure would expire (i.e., March 3, 1998), rather than the date the Immigration Judge actually entered the order (i.e., July 3, 1997). The Service's appeal from this decision is before us.

Federal regulations require motions to reopen to be filed "within 90 days of the date of entry of a final administrative order of removal, deportation, or exclusion, or on or before September 30, 1996, whichever is later." 8 C.F.R. § 3.23(b)(1)(1999). We agree with the Service that the date at which the regulatory 90-day period began in this case is July 3, 1997, the date when the Immigration Judge entered a final administrative order of deportation. Because the respondent waived his right to appeal from this decision, the decision became administratively "final" on the same day the order was entered. See 8 C.F.R. § 3.39 (an Immigration Judge's decision becomes "final" upon waiver of appeal or upon expiration of the time to appeal). To decide otherwise would render the words "date of entry" and "final" mere surplusage. Furthermore, regulations found at 8 C.F.R. § 3.2(c)(2)(1999) explicitly provide that motions filed with an Immigration Court (or this Board) "must be filed no later than 90 days after the date on which the final administrative decision was rendered [emphasis added]." See also Matter of J-J-, Interim Decision 3323 (BIA 1997) (motions to reopen before Board must be filed not later than 90 days after the date on which the final administrative decision was rendered, or on or before September 30, 1996, whichever date is later). The respondent filed his motion almost 7 months after he waived his appeal right from an Immigration Judge's decision finding him deportable as charged and granting him voluntary departure. The respondent does not fall within any one of the exceptions to the time and number restrictions provided either at 8 C.F.R. §§ 3.2(c)(3) or 3.23(b)(4) (1999).[2] Therefore, his motion before the Immigration Judge was untimely.

We note, as a final matter, that the courts and this Board have generally disfavored motions to reopen a final deportation order. Matter of Shaar, Interim Decision 3290 (BIA 1996). The Supreme Court has held that "(m)otions for reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial." INS v. Doherty, 502 U.S. 314, 323 (1992) (citations omitted); see also Matter of Shaar, supra, at 10; Matter of Coelho, 20 I&N Dec. 464, 472 (BIA 1992).

Accordingly, the following order will be entered.

ORDER: The interlocutory appeal is sustained, and the Immigration Judge's March 25, 1998, decision is vacated.

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[2] The respondent apparently did not seek the Service's acquiescence for joint filing (Service Brief at 2) which, if agreed to, would have created an exception to the time and number restrictions. See 8 C.F.R. §§ 3.2(c)(3)(iii) or 3.23(b)(4)(iv).

FURTHER ORDER: The Immigration Judge's July 3, 1997, order remains in effect as a final order.

Lauren R. Mathon
FOR THE BOARD